,HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION Nos.3520, 3746 and 3965 of 2006

Writ Petition No.3520 of 2006

Between:

M/s.MRKR-MBGEC, represented by

Sri C.Manohar Reddy …Petitioner.

AND

Chief Administrative Officer,

Construction, South Central Railway,

Secunderabad & another. …Respondents.

Counsel for the Petitioner : Sri N.Subba Rao

Counsel for Respondents 1 and 2 : Sri R.S.Murthy

Writ Petition No.3746 of 2006

Between:

Sri M. Ravinder Reddy …Petitioner.

AND

Chief Administrative Officer,

Construction, South Central Railway,

Secunderabad & another. …Respondents.

Counsel for the Petitioner : Sri N.Subba Rao

Counsel for Respondents 1 and 2 : Sri R.S.Murthy

Writ Petition No.3965 of 2006

K.Ajay Kumar Reddy …Petitioner.

AND

Chief Administrative Officer,

Construction, South Central Railway,

Secunderabad & another. …Respondents.

Counsel for the Petitioner : Sri N.Subba Rao

Counsel for Respondents 1 and 2 : Sri R.S.Murthy

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:: O R D E R ::

22nd MARCH 2006

Per G.S.Singhvi, C.J.

These petitions have been placed before the Division Bench in view of order dated 3-3-2006 passed by the learned Single Judge, who felt that the ratio of the decision dated 23-3-2005 rendered by another Single Judge in Writ Petition No.21401 of 2004 and batch, insofar as it relates to interpretation of Clause 18.2 of the agreement entered into between the contractors and the Administration of South Central Railway requires reconsideration.

The facts:

In pursuance of Tender Notice No.59/CAO/C/SC/2003, dated 4-8-2003 and Corrigendum No.1, dated 29-8-2003 issued by the Railway Administration, M/s.MRKR-MBGEC (petitioner in Writ Petition No.3520 of 2006) submitted tender for re-building of bridge No.750 across river Pennar on permanent diversion as 1 x 39.60 M + 11 x 40.20 M + 1 x 39.60 M (Clear) spans, PSC box section girders

(existing 13 x 39.60 M GB) with well foundation at Km.375/10-376/2 including earth work on approaches from Km.375/8 – Km.376/2 and construction of minor bridge No.751 (existing 3.66 M Arch Bridge) proposed as 1 x 3.66 M RCC box between Komali and Juturu stations. The petitioner was awarded contract for construction of the aforementioned bridge etc. After execution of the work, the petitioner submitted bills. The competent authority of the Administration of South Central Railway deducted seigniorage charges on ordinary sand used for civil construction in terms of para 27.2 of contract agreement read with Rule 10 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, 'the 1966 Rules').

M/s Sri M. Ravinder Reddy (petitioner in Writ Petition No.3746 of 2006) was awarded contract for Karimnagar – Jagityal New B.G. Line (Earth work in formation, cutting and construction of minor bridges from Ch 69000 M to Ch 69850 between Gangadhara and Jagityal stations). The petitioner executed agreement No.4/CAO/C/SC/06, dated 6-1-2006. The competent authority deducted seigniorage charges on ordinary earth used for civil construction in accordance with para 12.3 of the agreement. This has been challenged by the petitioner on the ground that in the absence of any specific provision in the contract agreement the respondents cannot deduct or withhold the amount representing seigionrage charges.

Sri K. Ajay Kumar Reddy (petitioner in Writ Petition No.3965 of 2006) entered into an agreement with the respondents for doing work on Karimnagar – Jagityal New B.G. Line. He executed agreement No.182/CAO/C/SC/2003, dt.18.12.2003. He has also questioned the action of the respondents to withhold seigniorage charges on ordinary earth.

The petitioners have generally pleaded that instructions issued by Chief Administrative Officer, Construction, South Central Railway, Secunderabad (respondent No.1) vide his letter dated 25-6-2004 envisaged deduction of seigniorage charges from the bills submitted by the contractors, but in view of the subsequent clarification issued by Principal Chief Engineer vide Memo dated 15-12-2004, seigniorage charges cannot be levied on ordinary earth. They have relied on order dated 23-3-2005 passed by the Single Judge in Writ Petition No.21401 of 2004 and batch, order dated 6-4-2005 passed in Writ Petition No.7476 of 2005, order dated 13-4-2005 passed in Writ Petition No.25081 of 2004, order dated 18-8-2005 passed in Writ Petition Nos.11235, 11236, 11244, 11245, 1246, 11247, 11264, 12550, 12763, 12765 and 13133 of 2005 and order dated 22-8-2005 passed in Writ

Petition Nos.15201, 15210, 15213 and 15214 of 2005 and pleaded that in view of those orders, the deduction of seigniorage charges on ordinary earth should be declared illegal and the respondents be directed to refund the amount already deducted. The petitioners have relied on letter dated 17-9-2004 issued by respondent No.1 and Memo dated 15-12-2004 issued by Principal Chief Engineer, South Central Railway and averred that levy of seigniorage charges on ordinary earth should be declared void because the agreements entered into between the parties do not specifically provide for levy of seigniorage charges on ordinary earth.

Sri N. Subba Rao, Advocate for the petitioners invited our attention to letters dated 25-6-2004, 17-9-2004 and 15-12-2004 issued by Chief General Engineer, South Central Railway, respondent No.1 and Principal Chief Engineer, South Central Railway, respectively and argued that even though vide G.O.Ms.No.331, dated 25-1-2001 and G.O.Ms.No.466, dated 28-4-2000, the Government of Andhra Pradesh has prescribed the rates of seigniorage charges applicable on various minerals including stone ballast, earth, morrum etc., the respondents cannot deduct seigniorage charges on ordinary earth or withhold payment of the bills submitted by the petitioners because vide Memo dated 15-12-2004, Principal Chief Engineer, South Central Railway had clarified that in the absence of any specific clause in the agreement for recovery of such charges, seigniorage charges are not required to be recovered from the contractor's bills. He submitted that the views expressed by two learned Single Judges on the interpretation of Memo dated 15-12-2004 represents correct legal position and there was no valid ground for the coordinate Bench to refer the matter to the Division Bench. Learned counsel then argued that even if a different interpretation can be placed on conditions incorporated in the agreement entered into between the petitioners and the Railway Administration, the Division Bench should adopt the interpretation placed by the learned Single Judges in different cases decided earlier.

Learned counsel for the respondents defended the deduction of seigniorage charges on ordinary earth used for civil construction by arguing that this was done in accordance with the terms of the agreements which provide for levy of seigniorage charges at the rate prescribed by the Government of Andhra Pradesh. He emphasized that the petitioners are not entitled to question the deduction and/or withholding of the amount equivalent to seigniorage charges fixed by the State Government because they have not challenged the relevant clauses of the

agreements, which provide for levy of seigniorage charges. Learned counsel further argued that the contentious issue relating to interpretation of terms of the agreement, which falls in the realm of contract, should be left to be decided by the civil court and the High Court should not entertain writ petition under Article 226 of the Constitution of India.

We have thoughtfully considered the entire matter. Clause 27.2 of the Special Conditions and Specifications of Work, which form part of contract agreement dated 26-3-2004 entered into between the respondents and the petitioner M/s.MRKR-MBGEC reads as under:

> "27.2. Seigniorage charges as fixed by the Government of Andhra Pradesh and payable to them as revised from time to time during the currency of contract will be recovered by Railway from the Contractor's on account and final bills and remitted to Government of A.P. The rate quoted by the tenderer shall be inclusive of these charges. Claims regarding revision of seigniorage charges and consequently enhancement of the accepted rate will not be entertained."

Para 12.3 of agreement dated 6-1-2006 entered into between the Railway Administration and M/s.Sri M.Ravinder Reddy reads as under:

> "12.3. Seigniorage charges as fixed by the Government of Andhra Pradesh and payable to the Government of Andhra Pradesh as revised from time to time during the currency of contract will be recovered by Railway from the contractor's on account and final bills and remitted to the Government of Andhra Pradesh. The rate quoted by the tender shall be inclusive of all these charges. Claims regarding revision of seigniorage charges and consequently enhancement of the acceptance will not be entertained."

Para 13.3 of agreement dated 18-12-2003 entered into between K.Ajay Kumar Reddy and the concerned authority of the Railway Administration reads as under:

> "13.3 Seigniorage charges as fixed by the Government of Andhra Pradesh and payable to them as revised from time to time during the currency of contract will be recovered by Railway from the contractor's on account and final bills and remitted to the Government of Andhra Pradesh. The rate quoted by the tender shall be inclusive of all these charges. Claims regarding revision of seigniorage charges and consequently enhancement of the acceptance will not be entertained."

A reading of the above reproduced three clauses of the different agreements entered into between the parties show that the petitioners had agreed to the recovery of seigniorage charges by the Railway Administration at the rates fixed by the Government of Andhra Pradesh. Rule 10 of the 1966 Rules provide for levy of seiginorage charges. It declares that seigniorage fee etc. is payable on all minor minerals despatched or consumed from the land. The rates of seigniorage fee are specified in Schedule I appended to the Rules. Ordinary sand which is used for civil construction finds mention at Sl.No.9 in Schedule I of Rule 10. Therefore, on a plain reading of the relevant clauses of the agreements entered into between the petitioners on the one hand and the Railway Administration on the other hand and Rule 10 of the 1966 Rules, it becomes clear that the petitioners are liable to pay seigniorage charges on ordinary sand used for civil construction.

The petitioners have not challenged the vires of Rule 10 of the 1966 Rules or the relevant clauses of the contract agreement. Therefore, the levy and deduction of seigniorage charges on the ordinary sand used for construction work cannot be declared illegal per se and Chief General Engineer cannot be accused to have violated the terms of the agreement when he issued letter dated 25-6-2004 to the subordinate authorities to deduct seigniorage charges from the bills of the contractor and remit the same to the State Government. Letter dated 17-9-2004 issued by respondent No.1 refers to G.Os issued by the State Government prescribing the rates of seigniorage charges for minerals including stone ballast, earth, morrum etc. It also refers to letter dated 25-6-2004 issued by Chief General Engineer and goes on to say that decision has been taken to specifically incorporate sand in the clause relating to taxes in the tender agreement. Memo dated 15-12-2004 goes a step further. It supersedes earlier letter dated 25-6-2004 and clarifies that seigniorage charges are not to be recovered from the contractor's bill if there is no specific clause to that effect in the existing agreement. However, information is required to be sent to the State Government so as to enable it to recover the seigniorage charges directly from the contractors. This letter also postulates incorporation of specific condition for recovery of seigniorage charges on earth, morrum, sand and other minerals at the rates fixed by the State Government. In our opinion, letter dated 17-9-2004 and Memo dated 15-12-2004 cannot be interpreted so as to relieve the petitioners of their

obligation to pay seigniorage charges in terms of the relevant clauses of the agreements, to which reference has been made hereinabove. Clause 27.2 of the Special Conditions and Specifications of Work awarded to M/s. MRKR-MBGEC and similar clauses in the agreements entered into between the remaining petitioners and the Railway Administration make it clear that seigniorage charges are payable by the contractor at the rates fixed by the State Government. These clauses are very widely worded. They provide for levy of seigniorage charges fixed by the Government without specifying any particular mineral. This necessarily means that seigniorage charges are to be levied by the Railway Administration on all minerals for which the rates have been fixed by the State Government. If we read these clauses in conjunction with Rule 10 of the 1966 Rules and Schedule I, then there remains no doubt that seigniorage charges are payable on all minor minerals, including ordinary earth, depatched or consumed from the land. The rates of seigniorage charges/fee are specified in Schedules I and II. Schedule I clearly refers to ordinary sand used for civil construction. Therefore, all contractors like the petitioners are duty bound to pay the seigniorage charges on the ordinary sand used for construction purposes.

In Writ Petition No.21401 of 2004 and batch, the petitioners had questioned the deduction of seigniorage charges of ordinary sand. The main plank of their argument was that in view of the decision contained in Memo dated 15-12-2004 issued by Principal Chief Engineer, the respondents cannot levy seigniorage charges on earth etc. because the agreement does not contain a specific provision for levy of such charges. The learned Single Judge referred to Memo dated 15.12.2004 and concluded that Clause 18.2 of the contract agreement, which is general in nature and does not specifically provide for payment of seigniorage charges on ordinary earth cannot be relied for justifying the levy of seigniorage charges on ordinary earth. In other writ petitions, the learned Single Judge simply referred to order dated 23-3-2005 passed in Writ Petition No.21401 of 2004 and batch, the relevant clauses of the agreement and concluded that seigniorage charges cannot be levied on ordinary sand. With great respect to the learned Single Judges, we are unable to approve their interpretation of the relevant clauses of the agreements entered into between the petitioners and the Railway Administration. In our considered view, Clause 27.2 of the agreement entered into between M/s MRKR –MBGEC and the Railway Administration and similar clauses in the agreements entered with the other

petitioners cannot be interpreted as excluding the levy of seigniorage charges on ordinary earth. These clauses specifically provide for levy of seigniorage charges as fixed by the Government of Andhra Pradesh. The latter has made statutory provision for levy of seigniorage charges on all minor minerals including ordinary sand. Therefore, on the basis of Memo dated 15-12-2004 issued by Principal Chief Engineer, South Central Railway, it is not possible to place a restrictive interpretation on the relevant clauses of the agreements, which provide for levy of seigniorage charges. We are in complete agreement with the referring Judge that where a clause in a contract between the parties is consciously expressed in broad terms, full effect should be given to the same and there is no reason to restrict their scope on the basis of a speculative notion entertained by the parties.

We are also inclined to approve the view expressed by the learned Single Judge in the reference order on the maintainability of the writ petition. It is true that adjudication of the plea raised by the petitioners against the levy of seigniorage charges on ordinary sand involves interpretation of the terms and conditions of contract, but, that itself does not justify entertaining of petition under Article 226 of the Constitution of India ignoring the fact that an equally efficacious alternative remedy is available to the petitioners either by filing civil suit or by seeking reference to an arbitrator and Memo dated 15.12.2004 issued by Principal Chief Engineer cannot be treated as conclusive of the interpretation of the terms and conditions of agreement for the purpose of making departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner. In this connection, we may usefully refer to some Judgments of the Supreme Court. In **State of U.P. v. Bridge & Roof Co.(India) Ltd.**, the Supreme Court was called upon to consider whether the rates quoted by the contractor were inclusive of the sales tax, if any, on the constructional plants, materials and supplies required for the purpose of execution of the contract. The respondent, who was awarded contract for rehabilitation and improvement of certain stretch of road in Uttar Pradesh applied to the Commissioner of Sales Tax, Uttar Pradesh for composition of tax liability. The Deputy Commissioner, Sales Tax, in exercise of the power delegated to him by the Commissioner, passed order dated 27-5-1992 that sales tax should be deducted at the rate of 1% at the time of payment of balance amount. After three years, the respondent filed writ petition in Allahabad High Court questioning the deduction of sales tax. The High Court did not go into the issue of maintainability of the writ

petition, but disposed of the same by observing that the Government shall deduct only 1% of the bill in question up to 31-3-1995. While setting aside the High Court's order on merits, the Supreme Court held:

> "15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).
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> 16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.
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> 17. Secondly, whether there has been a reduction in the statutory liability on account of a change in law within the meaning of sub-clause (4) of clause 70 of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the civil court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the civil court, as the case may be, according to law. Similarly if the Government says that any overpayment has been made to the respondent, its remedy also is the same.
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> 18. Accordingly, it must be held that the writ petition filed by the respondent for the issuance of a writ of mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law. (See the decision of this Court in **Asstt. Excise Commr. v. Issac Peter** where the law on

the subject has been discussed fully.) The writ petition ought to have been dismissed on this ground alone.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 — whether for issuance of mandamus or any other writ, order or direction — was misconceived for the reasons mentioned supra."

In **Kerala State Electricity Board v. Kurien E.Kalathil**, the Supreme Court considered the issue relating to maintainability of the writ petition in a contractual matter. The facts of that case were that the appellant, State Electricity Board executed an agreement dated 16-9-1981 with the respondent contractor for construction of a dam. After the commencement of the work, the State Government revised, by notification dated 30-3-1983, the minimum wages payable to employees employed in the works mentioned in the notification, w.e.f 1-4-1983. The respondent contractor claimed that he began making the revised payments to his workers as required for the period 1-4-1983. Till December 1984, the Board reimbursed the respondent contractor. However, from January 1985 the Board stopped making the payments for labour escalation, contending that construction of a dam was not covered by the notification dated 30-3-1983. This disagreement was settled when the Industrial Tribunal made an award on 14-10-1993, holding that the notification was applicable to dam construction (in case of workers employed for construction or maintenance of roads, or building operations and for stone-breaking or stone-

crushing). The award became final. On 23-12-1994 the Board wrote the respondent demanding recovery with interest of Rs.3.65 crores, which had been paid in the form of advances for various heads of work. The respondent filed a writ petition seeking to have the letter of demand quashed and also praying for payment of the amounts paid in revised wages. While the petition was pending, the Board, by an order dated 26-2-1997 terminated the contract, which the contractor challenged by filing another petition. The High Court disposed of both petitions holding that the termination of the contract was arbitrary, unjust and not in public interest and directed the Board to pay the amounts claimed by the respondent along with interest at 18%. The Supreme Court partly allowed the appeal of the Board and held:

> "The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not a writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. ……..A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

In **State of Jammu & Kashmir v. Ghulam Mohd. Dar,** the Supreme Court reiterated the settled rule that a writ of mandamus should not ordinarily be issued for enforcing the terms and conditions of a contract.

By applying the ratio of the aforementioned judgments to the facts of this

case, we hold that the petitioners are entitled to an effective alternative remedy by way of civil suit. It also appears to us that general conditions of contract (the same have not been placed on the record of the writ petition) contain a clause regarding arbitration. If that be so, the petitioners are also entitled to avail remedy by seeking reference of their dispute to the arbitrator.

In the result, the writ petitions are dismissed with liberty to the petitioners to avail alternative remedy. The parties are left to bear their own costs.

G.S.SINGHVI, C.J.

22nd March 2006

G.BHAVANI PRASAD, J.

SVS/ARS/VTV